

ADDENDUM TO

ALASKA POSITION
ON
INTERNATIONAL FISHERIES MANAGEMENT

With Special Reference to
The Single Negotiating Text
of the
United Nations conference
on the
LAW OF THE SEA

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State Dept. review completed

Jay S. Hammond
Governor

1976



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 28, 1976

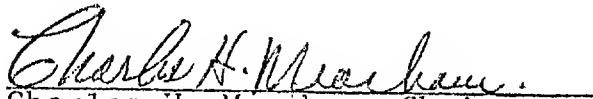
The Honorable Jay S. Hammond
Governor of Alaska
State Capitol
Juneau, Alaska 99811

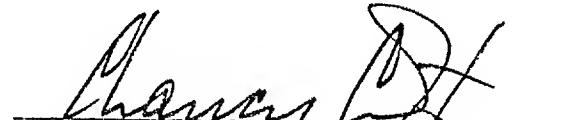
Dear Governor Hammond:

In accordance with AS 44.19.797, we have the honor to transmit to you an addendum to the Alaska Position on International Fisheries Management, with special reference to the Revised Single Negotiating Text of the United Nations Conference on the Law of the Sea.

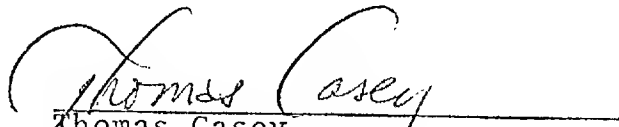
Sincerely,

THE ALASKA COMMISSION ON THE CONFERENCE OF THE LAW OF THE SEA

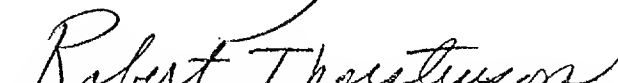

Charles H. Meacham, Chairman
and Executive Secretary

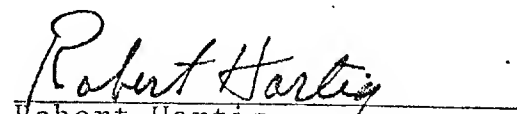

Chancy Croft
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ADDENDUM TO
ALASKA POSITION ON INTERNATIONAL FISHERIES MANAGEMENT

With Reference to
The Revised Single Negotiating
Text of the United Nations
Conference on the Law of the Sea

Following the 1975 Geneva session of the current United Nations Law of the Sea (LOS) Conference, the State of Alaska formally expressed its concern over the directions the Conference was taking with respect to fisheries management. Alaska did this by submitting to the President and the U. S. Delegation to the Conference a document entitled "Alaska Position on International Fisheries Management." This document set out the Alasks position on managing the world's living marine resources and made specific and detailed recommendations for amending the fisheries provisions of the "Single Negotiating Text" which the Conference produced at the close of the Geneva session.

The present document is an addendum to the "Alaska Position." It is primarily in response to certain changes made in the original Single Negotiating Text as a result of the first 1976 session of the Conference in New York, changes which now appear in the "Revised Single Negotiating Text."

SUMMARY OF "ALASKA POSITION"

The State of Alaska, with its experience in managing

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the largest U. S. area of fisheries jurisdiction, realizes that the fisheries regime established by any law of the sea treaty will be worthless unless it provides a base for workable management schemes. Hence the original "Alaska Position on International Fisheries Management" adopted as its basic principle that the LOS treaty must provide a jurisdictional basis for rational and effective management.

The practice of establishing international fishing rights by an on-going process of bilateral and multilateral negotiation of international fisheries agreements has proved a failure, from a realistic management standpoint. Alaska therefore proposed that coastal nations, the inevitable primary management entities of any law of the sea treaty, be granted exclusive control of fishing activities within their (again inevitable) up-to-200-mile economic zones. Exceptions to this exclusive jurisdiction should be made where biological realities dictate cooperation between nations; for example, highly migratory species must, by their nature, be managed internationally. In addition, coastal nations should be under a treaty-established mandate to optimize the sustainable yield of the resources in their zones. With these exceptions, coastal management entities should, for the sake of effective and responsive management, be given complete control over these resources. Foreign fishing could, at the coastal country's option, be allowed under license, but not as a matter of right.

Alaska's special concern for proper management of anadromous species led it to propose that exclusive jurisdiction

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over these important resources be granted by any LOS treaty to the coastal nation where the fish originate. Most importantly, Alaska also proposed that the destructive practice of harvesting anadromous species seaward of the 12-mile territorial sea be prohibited, except where specially authorized by the coastal nation of origin. Again, though, the management entities should be under an international obligation to optimize the sustainable yield and to cooperate with nations whose streams or territorial seas share the resources.

Alaska further proposed that coastal countries be granted exclusive rights in and management jurisdiction over the living resources of their adjacent continental margins, and that these living resources be designated by species in any LOS treaty.

It is the Alaska view that enforcement of fishing regulations--from surveillance through arrest and trial and punishment--should in nearly all cases follow management jurisdiction. In other words, the entities which promulgate the rules should also enforce them.

Finally, it was proposed that any LOS treaty should require compulsory settlement of international fisheries disputes, with the settlements being determined on the basis of management principles and by impartial persons familiar with the problems of effective fisheries management.

In presenting its position, the State of Alaska felt--and still feels--that its recommendations would, if carried out, result in the most satisfactory basis for rational and

effective fisheries management that a system of 200-mile economic zones allows.

THE "REVISED SINGLE NEGOTIATING TEXT":

COMMENT AND RECOMMENDATIONS

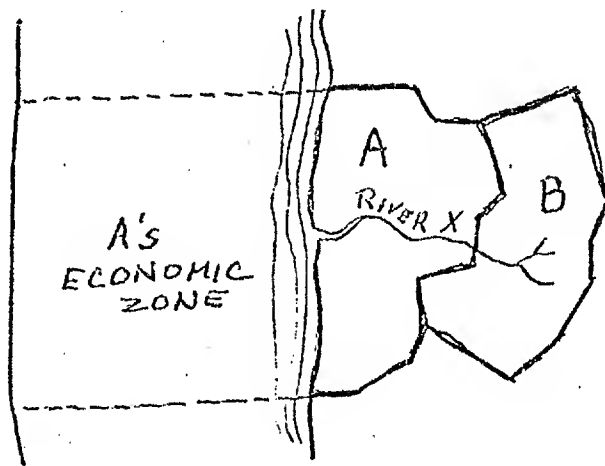
ON CERTAIN PROVISIONS

The part of the "Revised Single Negotiating Text" which especially concerns Alaska is Part II, presented by the chairman of the Conference's Second Committee. During the first 1976 New York session, the Geneva "Single Negotiating Text" was considered, article by article, in the Second Committee, and a large number of amendments were proposed. Very few of these proposals were accepted by the Chairman in his preparation of the revised text. Most of the changes made by the Chairman were mechanical or clarifying amendments. The fisheries provisions therefore retain the same basic regime set out in the first text. Certain of the revisions, however, are of concern to Alaska, and we take this opportunity to make comments and recommendations on these revisions.

1. Anadromous Species Article 55

Alaska's greatest apprehension over the revised text concerns what appears to be a relatively minor change: the omission, in the revised anadromous-species article of the single word "Coastal."

Paragraph 1 of former Article 54 read: "Coastal States in whose rivers anadromous stocks originate shall have the primary interest in and responsibility for such stocks." The revised version of this article, now re-numbered 55, omits the first word. Our inquiries have indicated that the omission is not accidental, but was intended. The thrust of paragraph 1, as it now reads, is apparently to grant primary management responsibility to the country where anadromous stock spawns, whether or not that country is a coastal nation. An illustration may help demonstrate the significance of this possible conclusion:



Suppose that a run of salmon spawn in the upper reaches of River X, within Nation B's borders, then migrates to the open sea across Nation A. Of course the main fishing activity for this stock will occur within Nation A's economic zone, normally relatively close to the mouth of River X. Under any sensible management regime, the regulation of this fishing activity would be conducted primarily by Nation A, with cooperation between the two countries where needed to

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protect Nation B's interests. This would be the result under the anadromous-species article proposed by Alaska in its original "Alaska Position." (See pages 47-48 of that document.) Yet Article 55 of the Revised Text allows the hypothetical Nation B to argue that it has the primary management responsibility, even though it is a landlocked country with no jurisdiction otherwise over the sea area of principal fishing activity for the stock.

Perhaps it is not the intent of the revision to grant countries like Nation B management control over activities occurring in other nations' waters. Certainly there are some indications that this was not intended. For example, Paragraph 2 of new Article 55 states: "The State of origin [shall establish regulations] for fishing in all waters landward of the outer limits of its exclusive economic zone. . . ." (Emphasis added.) This language indicates clearly an assumption that the "State of origin" is a coastal nation. How else would it have an exclusive economic zone, a jurisdictional area granted only to a coastal State by new Article 44? Further, in new Article 56 the management of catadromous species (a sort of mirror image of anadromous species) is specifically granted entirely to the coastal State.

We certainly hope that the intent of the Second Committee Chairman, in dropping the word "coastal" from the anadromous-species provision, is not to grant management control to inland nations in situations similar to that

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illustrated above. We again propose the Alaska version of the anadromous species Article (pages 47-48 of the "Alaska Position"), which reads as follows in Paragraph 1:

"1. Except as otherwise provided in paragraph 5, coastal States in whose waters anadromous species originate shall have exclusive rights in and management jurisdiction over such species."

Paragraph 5 of our original proposal would then require a State of origin to cooperate with another nation which shares the stream of origin.

2. Landlocked and Geographically Disadvantaged Nations - Articles 58 through 60

Following considerable debate in the Second Committee and other Conference arenas during the New York session, the Chairman chose to leave nearly unchanged those provisions of the original Single Text granting certain rights to landlocked and developing geographically disadvantaged nations to participate in the living-resource harvests of neighboring coastal nations. While the Chairman should be commended for his refusal to submit amended articles expanding those rights, despite considerable pressure to do so, Alaska still feels that the provisions should be deleted altogether. If economic assistance is to be given to disadvantaged areas of the globe, it ought to be done directly. Any right granted to any other nation or group of nations to exploit the

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living resources of a coastal nation's economic zone necessarily implies a continuing process of negotiating international agreements defining the extent of that right. As we have shown in our original position paper, this process has proved ineffective and an obstacle to efficient management of fish stocks.

3. Enclosed or Semi-Enclosed Seas -
Article 130

We fail to understand the significance of the Chairman's amendment of Article 130 on enclosed or semi-enclosed seas. In the first negotiating text, Article 134 required nations bordering such a sea to coordinate fisheries management in the sea. Alaska earlier expressed its concern that this obligation could impede effective management, again because it imposed an international agreement process on the countries, a process which might not in all cases be necessary for effective management. The revised article on enclosed and semi-enclosed seas, now numbered 130, states not that the bordering nations "shall" cooperate and coordinate, but that they "should" cooperate and "shall endeavor" to coordinate management. These changes do nothing but confuse the purpose of the provision: Either the nations are not obligated to agree, in which case the article serves little if any function, or they are obligated to try to agree, in which case the article is essentially unchanged in practical

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We again urge the Alaska approach, which proposes that countries bordering enclosed or semi-enclosed seas, like other nations, be required to coordinate fisheries management only where biological realities so dictate; in all other situations, workable management is best ensured by granting exclusive control to each coastal country within its economic zone. If, on the other hand, there are high seas areas completely enclosed by the economic zones of two or more nations, then coordination of management of the fishery resources within these areas should be required, as Alaska proposed in its original statement. (See page 154 of the "Alaska Position.")

SETTLEMENT OF DISPUTES - PART IV

Unfortunately, we have not had sufficient time to analyze completely the exceedingly complex dispute-settlement provisions of the Revised Single Text's new Part IV. We do, however, here reiterate our earlier recommendations for the settlement of disputes concerning fisheries management:

1. That the coastal or source nation's regulations continue to apply pending provisional arrangements or final settlement of any dispute over the coastal or source nation's obligation to optimize sustainable yield.
2. That the challenging nation or organization in any such dispute have a heavy burden of proof.

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3. That any management rules, provided through the appropriate dispute-settlement mechanism be made on the basis of management principles, with optimum sustainable yield the goal.
4. That fisheries disputes be settled by tribunals or committees of impartial persons familiar with fisheries management problems and principles.

It does appear from our initial examination of Part IV that the first, and possibly the third, of our recommendations are implicit in the dispute-settlement scheme set out in that part. These should be made explicit. Our fourth recommendation appears to be met by Articles 1 and 3 of Annex IIA of Part IV. The second recommendation does not seem to be included in the new part.

CONCLUSION

As expected, Alaska's statement on the first Single Negotiating Text was largely ignored in the recent New York session on the Law of the Sea. Politics often has a way of ignoring resource-management realities. Nevertheless, at least two changes urged by Alaska have been incorporated into the Revised Single Negotiating Text. First, new Article 18 (1) makes it clear that "any fishing activities" by foreign vessels in the territorial sea constitute non-innocent passage. Second, the Annex listing highly migratory species now includes the Sardinian sardine.

species, as well as their common names.

We should, no doubt, be grateful for small successes. Yet it is with regret and apprehension that we observe the Law of the Sea Conference moving toward a fisheries management regime which, despite certain virtues, will be born defective, if born at all. While again we expect that our warnings and recommendations will have little important effect on the future Conference negotiations, we nevertheless feel bound to point out the defects of the system which, perhaps, is to be thrust upon us. The "Alaska Position on International Fisheries Management," supplemented by this Addendum, attempts to do just that. It merits, we believe, the serious attention of the U. S. Delegation and all other delegations.